

AB 612 FAMILY COURT: REINFORCING CURRENT EVIDENCE STANDARD FOR FAMILY COURT (BEALL)

PROBLEM

Existing case law makes clear that non-scientific theories are not admissible evidence. However, as the law stands today non-scientific theories may be relied upon in family court. Non-scientific theories, such as alienation theories, waste court resources and unnecessarily prolong family law cases by discouraging proper investigation of child safety and shifting the attention of fact finders away from the physical and sexual safety of children. When asked to refrain from training court professionals in alienation theories, the Judicial Council indicated they would cease training in alienation theories only if a law was passed disallowing such training.

Professionals trained in alienation theories typically misinterpret children's disclosures of physical or sexual abuse or children's unwillingness to visit with a parent as evidence of alienation rather than evidence of abuse. Alienation theories strongly recommend forced contact of the child with the rejected parent and removal of the child from the parent who reported the child's disclosure to the court. Judges who rely upon evaluation reports based on alienation theories are likely to underestimate the risk to children of unsupervised contact or custody with parents accused of abuse because they are encouraged to misinterpret such accusations as alienation rather than abuse. As a result, children are often removed from parents attempting to protect them and placed in the custody of their identified abusive parents. 73% of the children placed in the custody of the accused parent continue to report abuse, and are not protected from danger. (Source: Research by Geraldine Stahly, Ph.D.)

THIS BILL

This bill will prohibit a court from considering a non scientific theory when making a determination

regarding child custody or visitation. The bill will do the following:

1. **AB 612** would add Section 3111 to the Family Code relating to custody and visitation, and would prohibit a court from relying upon a nonscientific theory, as defined, when making a determination regarding child custody or visitation.
2. **AB 612** would also clarify the responsibilities to the court of court-appointed and court-connected professionals.
3. **AB 612** will eliminate training in non-scientific theories, including alienation theories, from Judicial Council-approved education for family court professionals.
4. **AB 612** will ensure that evaluation reports are read and considered by the court only *after* stipulation of the parties or an evidentiary hearing establishing their admissibility.

SUMMARY

The exclusion of non-scientific theories is consistent with the basic California rules for admission of scientific evidence. Only scientific evidence that is "generally accepted," by the relevant scientific community will be admissible per the Kelly-Frye standard. These changes in the law will protect the due process rights of litigants in family court matters.

STATUS/VOTES

Assembly Judiciary Committee

SUPPORT

- California Protective Parents Association (Sponsor)
- Center for Judicial Excellence (Sponsor)
- Child Abuse Solutions (Sponsor)
- National Safe Child Coalition (Sponsor)
- California Teachers Association (Co-Sponsor)
- Courageous Kids Network
- Commission on the Status of Women
- Mothers In Crisis Coalition
- Family Equity
- Helen Vine Detox Center
- Incest Survivors Speakers Bureau
- JusticeCalifornia
- Marin City Golden Gate Village Resident Council
- Women Helping All People
- Mothers of Lost Children
- Protective Mothers Alliance
- Marin Immigrant Rights Coalition
- Justice for Children
- Sustainable San Anselmo
- Stop the Spray Marin
- Latinas Ending Abuse Now
- Domestic Violence Victims & Advocates Association

OPPOSITION

- Association of Certified Family Law Specialists
- Association of Family Conciliation Courts
- American Academy of Matrimonial Lawyer (Northern California Chapter)
- California Psychological Association
- Family Law Section of the State Bar (FLEXCOM)
- Judicial Council of California
- Santa Monica Bar Assoc. (Family Law Section)

FOR MORE INFORMATION

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